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Paper No.

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NOV 13 2008

In re Application of :
Raymond Anthony Joao : DECISION ON APPLICATION
Application No. 10/045,080 : FOR
Filed: January 15, 2002 : PATENT TERM ADJUSTMENT
Attorney Docket No. RJ470 :
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," filed September 8, 2008. Applicants request that the initial determination of patent term adjustment be corrected from three hundred four (304) days to one thousand one hundred thirty (1130) days.

The application for patent term adjustment is GRANTED to the extent indicated herein.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one thousand twenty-five (**1025**) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On July 11, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 304 days. The instant application for patent term adjustment was timely filed on September 8, 2008¹. Applicants assert that their response to the restriction requirement filed October 14, 2006 was fully responsive. Accordingly, applicants maintain that the reduction of 426 days entered pursuant to 37 CFR 1.704(c)(7) for the filing of a duplicate of the response on December 14, 2007 is not warranted.

¹ PALM records indicate that the Issue Fee was received on September 10, 2008.

Further, applicants argue that a period of adjustment of 399 days for Office delay should be entered for the period from February 15, 2007, the date four months after an election was filed on October 14, 2006, to March 19, 2008, the date of mailing of a restriction requirement.

Applicants' arguments have been considered, and found persuasive to an extent. The entry of a period of reduction of 426 days for filing a response on December 14, 2007 to correct an omission in the response filed on October 14, 2006 is not warranted and is being removed. 37 C.F.R. §1.704(c)(7) provides that:

Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.

The record supports a conclusion that the response filed October 14, 2006 did not contain an omission. In response to the Notice of Informal or Non-compliant Amendment mailed December 6, 2007, applicant resubmitted the response with an argument that there was no omission. Further, in the restriction requirement mailed March 19, 2008, the examiner acknowledged that applicants were correct that there was no omission. As there was no omission, entry of the period of reduction of 426 days, pursuant to 37 CFR 1.704(c)(7), is being removed.

Moreover, in response to the election filed October 14, 2006, the Office took action within the meaning of 37 CFR 1.702(a)(2) and 1.703(a)(2) on December 6, 2007. However, this was not within four months. The Office mailed an action under 35 U.S.C. 132 on December 6, 2007, four months and 295 days later. Accordingly, a period of adjustment of 295 days has been entered for Office delay.

However, no further correction of the patent term adjustment calculation is required. In response to the election filed December 14, 2007, the Office took action within the meaning of 37 CFR 1.702(a)(2) and 1.703(a)(2), within four months by mailing an action under 35 U.S.C. 132 on March 19, 2008. The fact that the Office mailed a restriction requirement on March 19, 2008, does not negate the fact that the Office took action

within the meaning of 35 U.S.C. 132 on December 6, 2007. Accordingly, the entry of a period of adjustment of 295 days, not 399 days as argued by applicants, is warranted.

Further, the entry of a period of reduction of 1 day in association with the request for continued examination (RCE) filed on March 1, 2006 is correct. The final Office action was mailed on November 30, 2005. Applicants took three months and 1 day to file a response. It is well-established that the three-month period ended on February 28, 2006. As stated in MPEP 710.02,

For example, reply to an Office action with a 3-month shortened statutory period dated November 30 is due on the following February 28 (or 29 if it is a leap year), while a reply to an Office action dated February 28 is due on May 28 and not on the last day of May. Ex parte Messick, 7 USPQ 57 (Comm'r Pat. 1930).

Moreover, applicants' attention is further directed to 37 CFR 1.703(f), which provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. See also, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000). Thus, the fact that the RCE received March 1, 2006, included a certificate of mailing dated February 27, 2006, has no effect on the calculation of patent term adjustment.

For all of these reasons, pursuant to 37 CFR 1.704(b), the period of reduction of 1 day was properly entered.

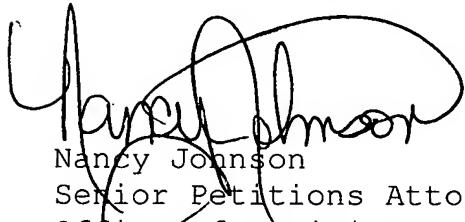
In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ONE THOUSAND TWENTY-FIVE (**1025**) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance)

will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Wednesday

Date: 11/12/2008

Time: 14:36:22

PALM INTRANET

PTA Calculations for Application: 10/045080

Application Filing Date:	01/15/2002	PTO Delay (PTO):	731
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	427
Post-Issue Petitions:	0	Total PTA (days):	1025
PTO Delay Adjustment:	721		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
77	11/12/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	295		
76	11/07/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	426		
66	07/11/2008	MAIL NOTICE OF ALLOWANCE			
65	06/20/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
64	05/22/2008	MISCELLANEOUS INCOMING LETTER			
51	06/06/2008	DOCUMENT VERIFICATION			
50	06/06/2008	NOTICE OF ALLOWABILITY			
49	05/22/2008	DATE FORWARDED TO EXAMINER			
48	05/19/2008	AMENDMENT AFTER FINAL REJECTION			
47	05/20/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
46	05/16/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
45	05/05/2008	MAIL FINAL REJECTION (PTOL - 326)			
44	05/01/2008	FINAL REJECTION			
43	04/11/2008	DATE FORWARDED TO EXAMINER			
42	03/26/2008	RESPONSE TO ELECTION / RESTRICTION FILED			
41	03/19/2008	MAIL RESTRICTION REQUIREMENT			
40	03/14/2008	REQUIREMENT FOR RESTRICTION / ELECTION			
39	03/04/2008	CASE DOCKETED TO EXAMINER IN GAU			
38	01/08/2008	DATE FORWARDED TO EXAMINER			
37	12/14/2007	RESPONSE TO ELECTION / RESTRICTION FILED		426	34
36	12/06/2007	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
35	08/08/2007	DATE FORWARDED TO EXAMINER			

34.1	10/14/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
34	10/14/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
33	10/12/2006	MAIL RESTRICTION REQUIREMENT			
32	10/10/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
31	07/30/2006	MISCELLANEOUS INCOMING LETTER			
30	08/02/2006	DATE FORWARDED TO EXAMINER			
29	07/30/2006	RESPONSE AFTER NON-FINAL ACTION			
27	05/18/2006	MAIL NON-FINAL REJECTION			
26	05/15/2006	NON-FINAL REJECTION			
25	03/04/2006	DATE FORWARDED TO EXAMINER			
24	03/01/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
23	03/04/2006	DATE FORWARDED TO EXAMINER			
22	03/01/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		1	19
21	03/04/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
20	03/01/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
19	11/30/2005	MAIL FINAL REJECTION (PTOL - 326)			
18	11/28/2005	FINAL REJECTION			
17	09/16/2005	DATE FORWARDED TO EXAMINER			
16	09/13/2005	RESPONSE AFTER NON-FINAL ACTION			
15	06/17/2005	MAIL NON-FINAL REJECTION			
14	06/13/2005	NON-FINAL REJECTION			
13	04/22/2005	DATE FORWARDED TO EXAMINER			
12	04/06/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
11	03/15/2005	MAIL RESTRICTION REQUIREMENT	731		-1
10	03/09/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
8	07/28/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
7	07/06/2004	CASE DOCKETED TO EXAMINER IN GAU			
6	05/03/2002	CASE DOCKETED TO EXAMINER IN GAU			
5	03/01/2002	APPLICATION DISPATCHED FROM OIPE			
4	02/25/2002	APPLICATION IS NOW COMPLETE			
2	01/25/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/15/2002	INITIAL EXAM TEAM NN			

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